

Administrative Law Judge Hearing: MPCA Proposed water quality standards for wild rice

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October 26, 2017

Introduction:

- Water Projects Coordinator for the Fond du Lac Band of Lake Superior Chippewa since 1997.
- 20 years' experience in developing water quality standards
- Developed the monitoring and assessment program for reservation waters, periodic review and revision of our water quality standards and criteria.
- Collaborated with university scientists and financially supported research on basic wild rice ecology and sulfate toxicity for more than ten years
- I support our Natural Resources Program in their management and restoration of wild rice waters, on- and off-reservation, and

I participated in all of the tribal consultations and technical meetings between the MPCA and Minnesota tribes since they began their wild rice research and rulemaking process, and have provided extensive comments and recommendations to MPCA staff about our knowledge and experience in sustainably managing wild rice. I also participated on the MPCA's wild rice advisory committee. From my perspective, the proposed rule revisions are wholly inadequate to protect this invaluable and irreplaceable natural resource. I will again be providing extensive written technical comments on the rule, the SONAR, and the technical supporting information, but I would like to highlight several fundamental deficiencies I see in the rule as proposed in my oral testimony today.

There is a structural flaw in MPCA's conceptual approach to their revised wild rice rules. It starts with their insistence in maintaining the "wild rice" use in Class 4 (agriculture and wildlife) rather than Class 2 (aquatic life use). By definition, they choose to narrowly define wild rice's "value" as restricted to simply food for humans and wildlife, rather than as a key ecologically significant species that has essential associations with other aquatic plants and animals, and actually serves as a clear indicator of a high quality functional aquatic ecosystem. Secondly, there is a disconnect between their narrow definition of a wild rice water and the calculated protective sulfate criterion (CPSC). The equation-derived criterion is linked to *the probability of wild rice being present*, not a healthy and sustainable population of wild rice that provides "harvest and use of grains as a food source".

While tribes have consistently and wholeheartedly agreed that the **definition** of a wild rice water should simply be the presence of wild rice (just like the presence of trout in a stream defines it as a trout stream), **there needs to be an ecologically relevant endpoint or response variable linked to the criteria**. The MPCA is proposing to use only the mean annual sulfate concentration in a wild rice waterbody as its sole means of assessing compliance; they are not proposing to actually measure the health or condition of the wild rice in that waterbody, either to establish a baseline or to assess condition and trends, as they do for other parameters as part of implementing their water quality standards through monitoring and assessment.

Related to this structural flaw in the proposed rules, you should also be aware that Minnesota tribes have a different perspective of the 1998 rulemaking that identified 24 wild rice waters and established broad narrative standards to "protect the water quality and habitat necessary to maintain them." We

agreed to provide MPCA with that limited list of wild rice waters with the understanding that it was only a beginning, a token gesture on the part of the state to redress their failure to adequately inventory and monitor wild rice waters in the state for decades. Nearly 20 years later, the agency's continued failure to adequately inventory, monitor and assess wild rice waters is for us, a broken commitment. That is why we continue to advocate for applying these broad narrative standards to all wild rice waters in the state's water quality rules.

Finally, I want to make it clear in my testimony today, and will reiterate this in our written comments: Fond du Lac does not want the state to include our reservation wild rice waters in their published list of Class 4D waters in the rule, for two reasons:

1. We do not believe that the MPCA's proposed wild rice water quality standards are protective of manoomin, and we do not want there to be any misperception on the part of the state, the public, or USEPA in their review of the proposed rule revisions, that we in any way support or condone their wild rice rule revisions.
2. Fond du Lac has federally approved water quality standards and jurisdiction over all waters of the Reservation. It is not appropriate for the state to make any determination regarding beneficial use, criteria, or antidegradation about the waters of the Reservation.